



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2002-015458

11/24/2003

photographs that would include date stamps not contained on the photographs submitted to the administrative law judge; a tape recording of Les Combs, a State Building Inspector; and the expert opinion and/or affidavit of Mark Ptashkin, Senior Electrical Plans Examiner and Building Inspector for the City of Glendale. Plaintiffs have failed to explain the relevance of the tape recording of Les Combs or the expert opinions of Mark Ptashkin. Plaintiff also claims that the dated original photographs would support testimony before the administrative law judge. However, dated photographs are of little relevant value, given the fact that the dates imprinted upon photographs can be manipulated by the photographer or subsequently by any person who develops or prints photographs. Most importantly, Plaintiffs have failed to explain how this new or additional evidence is of such a nature that it would have affected or changed the decision of the administrative law judge or the agency.<sup>1</sup>

IT IS ORDERED denying Plaintiffs' request to introduce additional evidence for the reason that Plaintiffs have failed to demonstrate its relevance to this court's inquiry.

Plaintiffs originally filed a complaint with the Registrar of Contractors based upon poor work performed by Rick Johnson and Watt Up Electric, Inc., on their home in Maricopa County, Arizona. Neither Johnson nor Watt Up Electric ever appeared before the Registrar of Contractors. In fact, Johnson was served with this Administrative Review Action while in the custody of the Maricopa County Sheriff's Office.

Plaintiffs' complaint to the Registrar of Contractors came up for a hearing on May 1, 2002 before Administrative Law Judge Sondra J. Vanella. At the conclusion of the hearing, Judge Vanella concluded that the State inspector "credibly testified at hearing that at the job site inspection, he could find no evidence establishing workmanship deficiencies committed by Watt Up (and Rick Johnson) because all work that may have been performed by Watt Up (and Rick Johnson) had been reworked by Mr. Gonzales, an unlicensed contractor."<sup>2</sup> The administrative law judge concluded:

Ms. Alexander failed to sustain the required burden of proof as to each of the foregoing charges because she failed to present any credible evidence that affirmatively established that Watt Up is the responsible entity for any deficient electrical work or any damage she may have sustained as a result thereof. In the absence of such evidence, Ms. Alexander failed to establish a violation by Watt Up of A.R.S. Section 32-1154(A)(2), (A)(3) and/or (A)(7).<sup>3</sup>

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<sup>1</sup> See Shaffer v. Arizona Liquor Board, 197 Ariz. 405, 4 P.3d 460 (App. 200)

<sup>2</sup> Recommended Decision of Administrative Law Judge, dated May 17, 2002, at page 2.

<sup>3</sup> Id., at page 4.

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The Plaintiffs have timely filed this Administrative Review Action, but failed to order a transcript of the hearing before Administrative Law Judge Vanella from May 1, 2002. The Certification of the Record on Review from the Office of Administrative Hearings reflects that “the transcript has not been designated as part of the record by Appellant...”<sup>4</sup> All of the issues raised by the Plaintiffs in this Administrative Review Action are fact intensive. Plaintiffs basically challenge the sufficiency of the evidence to support the administrative law judge’s recommended decision and the agency’s order. Plaintiffs’ claim that the conclusions reached by the administrative law judge and the agency are not supported by substantial evidence, are contrary to law (that Plaintiffs failed to explain how the decision is contrary to law), and is arbitrary and capricious. All of these issues require that this court review the record from the Office of Administrative Hearings and the Registrar of Contractors. Unfortunately, when matters are not included within a record on appeal (or review from an administrative agency), the missing portions of that record must be presumed to support the decision and action of the trial judge or trier of fact.<sup>5</sup>

Plaintiffs failure to order a transcript of the hearing before the administrative law judge forces this court to presume that the evidence that was presented supports the findings of fact and conclusions made by the administrative law judge. In fact, those findings of fact and conclusions of law are the only “record” before this court to review. Thus, this Court concludes that the administrative law judge and agency’s decision in this case were supported by substantial evidence, were not contrary to law, were not arbitrary, were not capricious, and were not an abuse of discretion.

IT IS THEREFORE ORDERED denying all relief as requested by the Plaintiffs in their complaint.

IT IS FURTHER ORDERED affirming the decision of the Arizona Registrar of Contractors made in this case.

It further appears that as Plaintiffs are appearing without benefit of counsel, this Court will sign this minute entry opinion as an order and judgment of the court.

/ s / HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>4</sup> Certification of Record on Review by the Office of Administrative Hearings, at page 6.

<sup>5</sup> See State v. Mendoza, 181 Ariz. 472, 474, 891 P.2d 939, 941 (1995); Baker v. Baker, 193 Ariz. 70, 72, 900 P.2d 764, 766 (1995); State v. Zuck, 134 Ariz. 509, 513, 658 P.2d 162, 166 (1982); in re: Mustonen’s Estate, 130 Ariz. 283, 284, 635 P.2d 876, 877 (App. 1981).